

REMARKS

This responds to the Office Action dated October 5, 2004. Claim 41 is amended and claims 47-49 are added. As a result, claims 1-49 are now pending in this application. Claim 41 has been amended to further clarify the recited subject matter.

Telephone Interview

A telephone interview was conducted between Examiner Kristen Drolesch Mullen and Applicant's representative Marvin Beekman on November 23, 2004. Applicant thanks the Examiner for her courtesy extended in conducting the telephone interview.

Applicant's representative requested clarification of the rejection of claim 41 in the Office Action. In particular, the Examiner and the Applicant's representative discussed the assertion regarding functional language found in section 2 and the response to arguments in section 5. Agreement regarding the allowance of claim 41 was not reached during the interview.

§102 Rejection of the Claims

Claim 41 was rejected under 35 USC § 102(e) as being anticipated by Conley et al. ("Conley", U.S. Patent No. 6,415,175). Applicant respectfully traverses the rejection.

The Office Action states: "The functional language and statements of intended use have been carefully considered but are not considered to impart any further structural limitations over the prior art." In the telephone interview, the Examiner helpfully indicated that she was concerned with the language "to communicate with the processor and with a medical device that is adapted for acquiring data regarding cardiac events occurring at two or more sites." Applicant notes that this language provides antecedent basis for cardiac events occurring at the two or more sites, as recited in the remainder of the claim.

The Office Action states, "with respect to claim 41, the Examiner points out that the language of claim 41 does not require that statistical distribution for the two sites be displayed in the same histogram." Applicant respectfully traverses this assertion. In previously-presented claim 41, a statistical distribution for each of the two or more sites is formed, the statistical distribution for each of the two or more sites is displayed in a histogram, the histogram includes

a plurality of histogram bins, and each histogram bin includes a representation for at least a portion of the statistical distribution for each of the two or more sites. During the interview, the Examiner was not able to remember how the recited claim language was interpreted to support the assertion and the rejection.

In the interest of furthering prosecution of this application to finality, Applicant has amended claim 41 to further clarify the recited subject matter. Amended claim 41 recites, among other things, “wherein each histogram bin includes a representation for at least a portion of the statistical distribution for each of the two or more sites such that each of the two or more sites is represented in each histogram bin.” Applicant respectfully submits that no new matter is added.

Applicant is unable to find, among other things, in the cited portions of Conley a device comprising a processor, communication circuitry, a display, and a memory that is encoded with a software program that is executable by the processor to form a statistical distribution for each of the two or more sites, and display the statistical distribution for each of the two or more sites in a histogram, where the histogram includes a plurality of histogram bins, and each histogram bin includes a representation for at least a portion of the statistical distribution for each of the two or more sites such that each of the two or more sites is represented in each histogram bin, as recited in amended claim 41.

Applicant respectfully requests withdrawal of the rejection, and reconsideration and allowance of the claim 41.

Allowable Subject Matter

Applicant acknowledges the allowance of claims 1-40 and 45-46.

Claims 42-44 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Amended independent claim 41 is believed to be in condition for allowance. Thus, claims 42-44 are also believed to be in condition for allowance.

New independent claim 47 includes language recited in previously presented independent claim 41 and original dependent claim 42, which was found to be allowable if rewritten into independent form. New dependent claims 48-49 depend on claim 47, and include language

recited in previously presented dependent claims 43-44. Applicant respectfully requests consideration and allowance of new claims 47-49.

Reservation of the Right to Swear Behind References

Applicant maintains its right to swear behind any references which are cited in a rejection under 35 U.S.C. §§102(a), 102(e), 103/102(a), and 103/102(e). Statements distinguishing the claimed subject matter over the cited references are not to be interpreted as admissions that the references are prior art.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6960 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By their Representatives,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 6 day of November, 2004.

Paula Sucky
Name

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Signature